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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047135
Party	Plaintiff Alloutof, Inc. Alloutof, Inc. ,
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Attachments	TTAB - Response in Opposition - Banned.pdf ( 6 pages )(6706452 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ALLOUTOF, INC.	)	
	)	
Opposer	)	
	)	
v.	)	
	)	
GGW MARKETING, LLC.	)	Opposition No. 92047135
	)	Registration No. 2,611,100
Registrant	)	
	)	
	)	

**APPLICANT'S RESPONSE IN OPPOSITION TO REGISTRANT'S MOTION TO  
DISMISS**

Petitioner, Alloutof, Inc. (hereafter "Applicant") files this response in opposition to Registrant's Motion to Dismiss because the alleged facts do not support Registrant's FRCP 12(b)(6) motion, since Petitioner has not lost its corporate status due to suspension and in any event is in the process of reinstating its status of suspension to "active"

**I. Petitioner has Standing to File a Petition to Cancel Because it is in the  
Process of Applying for Reviver During the Cancellation Proceeding**

As Registrant states in Page 4 of its Motion to Dismiss, "the petitioner corporate entity has the burden of showing that it was revived or, at the least, *was in the process of applying for reviver during the relevant time period* in order to have standing to attempt to assert any action." Registrant would have the Trademark Trial and Appeal Board believe that the relevant time period is that of the prosecution of Petitioner's trademark applications. However, the present cancellation does not relate to Petitioner's trademark applications. Instead, since Registrant

argues that Petitioner lacks standing to file a Petition to Cancel. The relevant period for proving standing is therefore the period during which Petitioner must address Registrant's challenge of lack of standing. As evident in Exhibit 1 of Petitioner's Response, Petitioner is in the process of applying for reviver. Since Petitioner timely files this response to Registrant's Motion to Dismiss for lack of standing, and provides evidence that it is in the process of applying for reviver, Petitioner has satisfied its burden of showing it has standing.

## **II. Petitioner's Has Standing Without Regard to the Validity of its Trademark Applications**

Registrant mistakenly believes that Petitioner's trademark rights arise out of its trademark applications, as opposed to its common law rights. It is well settled that trademark rights arise from use and not from registration with the United States Patent and Trademark Office. Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763, 768, 120 L. Ed. 2d 615, 112 S. Ct. 2753 (Section 43(a)(1) of the Lanham Act protects unregistered service marks in the same manner and to the same extent as registered marks), rehearing denied, 505 U.S. 1244, 120 L. Ed. 2d 947, 113 S. Ct. 20 (1992); accord Time Mechanisms, Inc. v. Qonaar Corp., 422 F. Supp. 905, 911 (D.N.J. 1976 ("trademark rights arise from use and not registration"). Thus, Petitioner's ability to cancel Registrant's trademark applications are not hindered by the validity or invalidity of its trademark applications.

Moreover, a California corporation does not lose its legal entity status simply because it is suspended. Instead, as Registrant has argued in page 3 of its motion, a suspended corporation is "disabled from resort to the courts for any purpose." Thus, Registrant still maintains its legal status as a corporation and its trademark applications are not void ab initio.

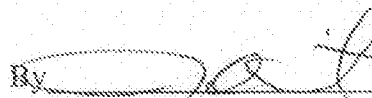
Finally, Petitioner's trademark applications are not at issue in the present cancellation of Registrant's trademark registration, as Registrant has filed no counterclaim.

**III. Petitioner's Actions are not Sanctionable because its Trademark Applications are Still pending and Petitioner only Recently Discovered its Suspension Status**

Registrant provides no authority that a California corporation may not file a trademark application, or that it loses its "legal entity" status if suspended. Moreover, the Board should notice that the "relevant period" for applying for reviver in the course of prosecuting a trademark application is the period of pendency of the trademark application. Since Petitioner's trademark applications are still pending, and since Petitioner has applied for reviver, Petitioner has timely filed a reviver in the course of prosecuting its trademark applications. It therefore has committed no act that is sanctionable.

Lastly, as evident in Exhibit 1, Petitioner only recently discovered its suspension status and did not knowingly or willfully attempt to defraud the Trademark Office as Registrant suggests.

WHEREFORE, Petitioner requests that Registrant's Motion to Dismiss under FRCP 12(b)(6) be dismissed and Registrant be directed to timely file an Answer in the current proceedings or suffer a Notice of Default.

By   
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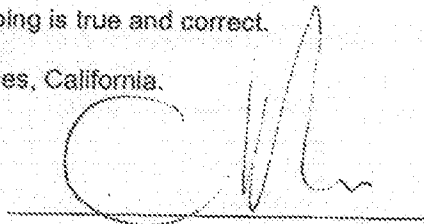
**EXHIBIT 1**

I, Carlos Reis, declare:

1. I am the president of Petitioner corporation, AllOutof, Inc.
2. I have been informed by the Franchise Tax Board (FTB) through my current CPA that I must file the tax returns for AllOutOf, Inc. for the years 2004 and 2005 in order to remove the suspension status of AllOutof, Inc.
3. The delay in filing the tax returns was caused by my former CPA, who due to health reasons, failed to timely file those tax returns.
4. I have employed a new CPA who has completed the 2004 tax returns and will soon complete the 2005 tax returns which will be promptly mailed to the FTB in approximately one month.
5. I will mail proof of active status as soon as the FTB clears my suspension status.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of April 2007, in Los Angeles, California.



Carlos Reis

**PROOF OF SERVICE**

I hereby certify that a true and complete copy of the foregoing

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has been served on JoAnna M. Esty, counsel for Opposer, on April 23, 2007, via First Class  
Mail, postage prepaid to:

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Nikki Steen